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10 *Counsel for proposed intervenor,*
11 *Dennis Dilbeck*

12 **IN THE UNITED STATES DISTRICT COURT**
FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 **SAN FRANCISCO DIVISION**

14 NETFLIX, INC. a Delaware corporation,

15 Plaintiff,

16 v.

17 BLOCKBUSTER INC., a Delaware
18 corporation, and DOES 1-50,

19 Defendants.
20
21

No. C 06 2361 WHA JCS
Judge William Alsup

**DENNIS DILBECK'S MOTION TO
EXTEND TIME TO FILE HIS
CONSOLIDATED REPLY**

22 **DENNIS DILBECK'S MOTION TO EXTEND TIME TO FILE HIS**
23 **CONSOLIDATED REPLY IN SUPPORT OF HIS MOTION FOR LEAVE TO INTERVENE**
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1 Dennis Dilbeck (“Dilbeck”) respectfully files this Motion to Extend Time to File his
 2 Consolidated Reply in Support of his Motion for Leave to Intervene pursuant to N.D. Cal. Civil
 3 L.R. 6-3 and states as follows:

4 Dilbeck filed the instant Motion to Intervene on October 11, 2006. On October 25, 2005,
 5 the Court set the hearing for Dilbeck's Motion to Intervene for December 7, 2006 at 8:00 a.m.,
 6 at 450 Golden Gate Avenue, 17th Floor, San Francisco, CA 94102, in Courtroom 9.

7 Civil Local Rule 7-4 states that reply briefs are due “not less than 14 days before the
 8 hearing date.” Pursuant to Civil Local Rule 7-7(d), the October 25 order automatically extended
 9 Dilbeck's time to file and serve reply papers to 14 days preceding the new hearing date. Counsel
 10 believed the Reply to be timely filed pursuant to Rule 6(a). *Cf.* N.D. Cal. Civil L.R. 1-2(b) (local
 11 rules “supplement” and are “construed so as to be consistent with” the Federal Rules of Civil
 12 Procedure). Rule 6(a) states:

13
 14 In computing any period of time prescribed or allowed . . . by the local rules of
 15 any district court the day of the act, event, or default from which the designated
 16 period of time begins to run shall not be included. The last day of the period so
 17 computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday . . .
 . in which event the period runs until the end of the next day which is not one of
 the aforementioned days. . . . “[L]egal holiday” includes . . . Thanksgiving Day . . .
 . and any other day appointed as a holiday . . . by the state in which the district
 court is held.

18 Fed. R. Civ. P. 6(a) (emphasis supplied). Thus, the deadline for Dilbeck's Reply under the first
 19 sentence of Rule 6(a) is November 23. However, Counsel read the second sentence of Rule 6(a)
 20 to modify Civil Local Rule 7-4's 14-day deadline to run “the end of the next day” after
 21 November 23 (Thanksgiving Day), November 24 (a legal holiday pursuant to Cal. Gov't Code §
 22 19853(a)), November 25 (a Saturday), and November 26 (a Sunday) – i.e., November 27.
 23 Consequently, counsel believed the Reply was timely filed on today until counsel received a
 24 phone call from the Court's clerk, whereupon counsel endeavored to file the Reply as soon as
 25 reasonably possible.

26 It is not counsel's practice to file pleadings in an untimely manner. In this instance,
 27 counsel genuinely believed that the interplay between Rule 6(a) and Civil Local Rule 7-4
 28 resulted in a November 27 deadline. Had counsel understood that Civil Local Rule 7-4 could be

1 interpreted to result in a November 23 deadline, counsel would have filed Dilbeck's Reply on
2 November 23.

3 WHEREFORE, Dilbeck prays that the Court enter an order extending the time for
4 Dilbeck to file his Consolidated Reply in Support of his Motion for Leave to Intervene to
5 November 27, 2006.

6 Dated: November 27, 2006
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